

# Exhibit N

30(b)(6) Steven William Carter  
MST, LLC v. North American Land Trust, et al.

January 14, 2025

Page 1

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF SOUTH CAROLINA  
3 CHARLESTON DIVISION  
4 MST, LLC,  
5 Plaintiff,  
6 vs. CASE NO. 2:22-cv-00874-DCN  
7 NORTH AMERICAN LAND TRUST AND GEORGETOWN  
8 MEMORIAL HOSPITAL,  
9  
10 Defendants.

11 GEORGETOWN MEMORIAL HOSPITAL,  
12  
13 Third-Party Plaintiff,  
14  
15 vs.  
16  
17 KYLE YOUNG AND JACQUELINE YOUNG,  
18  
19 Third-Party Defendants.

20 30(B)(6) VTC NORTH AMERICAN LAND TRUST  
21 DEPOSITION OF: BY: STEVEN WILLIAM CARTER  
22  
23 DATE: January 14, 2025  
24  
25 TIME: 9:58 AM  
LOCATION: WALKER GRESSETTE LINTON, LLC  
66 Hasell Street  
Charleston, SC  
TAKEN BY: Counsel for the Plaintiff  
REPORTED BY: MICHAEL DAVID ROBERTS,  
Court Reporter

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1 that we have been aware of, and we've been  
2 successful in just about all of those with the  
3 exception of one.

4 Q. And which one was that?

5 A. That was Atkinson versus Commissioner,  
6 St. James conservation easement. The tax court  
7 judge did not find that the conservation purposes  
8 were sufficient to qualify for tax deductibility.

9 Q. You mentioned 11 cases. Do you have a  
10 record of those 11 cases?

11 A. I do.

12 Q. All right. Have any of those cases  
13 involved an instance where the service questioned  
14 an amendment to the easement?

15 A. No.

16 Q. They have all involved the original  
17 easement?

18 A. Yes, sir. Correct.

19 Q. There have been instances where the  
20 service has -- the IRS has audited NALT, correct?

21 A. Yes, sir.

22 Q. How many times has the IRS audited  
23 NALT?

24 A. Three times: 2004, 2014 and 2018 just,  
25 recently.

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1 Q. And we'll get to those later.

2 A. I hope so. Proud of that work, too.  
3 Or those outcomes I should say.

4 Q. Has NALT been a direct party to any  
5 litigation?

6 A. It has not.

7 Q. It has never been a defendant in a suit  
8 brought by the government or an individual?

9 A. No. I'm aware of -- in 2015 there's a  
10 project Beaver Pond. Apparently NALT was named as  
11 a -- in this lawsuit, but we were never served and  
12 it never went anywhere, and I'm not sure it still  
13 exists.

14 Q. Has NALT ever initiated any litigation  
15 to enforce the terms of an easement that it  
16 believed to have been breached?

17 A. We have.

18 Q. What -- how many times has NALT done  
19 that?

20 A. We were only compelled to do that once.  
21 We've been able to usually resolve most of our  
22 compliance issues without litigation, which is our  
23 strong preference of course. But in one  
24 circumstance three years ago we were forced to hire  
25 an attorney and litigate.

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1 Q. And that doesn't include the pavement,  
2 correct, that goes along with the parking?

3 A. I don't know. I didn't get down to  
4 that level.

5 Q. It doesn't include the pole lighting of  
6 the -- of the parking lots, does it?

7 A. I didn't get down to that level. I'm  
8 sorry.

9 Q. Was there a helicopter pad that was  
10 contemplated for this hospital; do you know?

11 A. I understand there was, or at least I  
12 saw a narrative talking about helicopters, so I  
13 assume, unfortunately, that there was.

14 Q. To your knowledge, was anybody at North  
15 American Land Trust charged with evaluating the  
16 plan for the -- the hospital's plan to determine  
17 the impact on that 56 acres as well as the  
18 collateral impact on the remaining land of Weehaw?

19 A. Andy Johnson.

20 Q. That was his job?

21 A. Correct.

22 Q. Where's Andy Johnson now?

23 A. Six feet under.

24 Q. I'm sorry.

25 A. Andy passed away. Yeah.

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1 Q. When did he die?

2 A. 2021. Did you not know that? I'm  
3 sorry, I didn't mean to be --

4 Q. No, I didn't know --

5 A. -- flippant there.

6 Q. -- because I -- I didn't know -- that's  
7 the first I've heard of it.

8 A. Yes. Andy passed away unfortunately in  
9 2001 -- 2021. Excuse me.

10 Q. Okay. So he would have been the person  
11 that you think would have evaluated those  
12 consequences that I just mentioned?

13 A. Absolutely.

14 Q. At some point this was presented to the  
15 NALT board for final decision, was it not?

16 A. It was.

17 Q. And if you would please go to the  
18 letter dated May 9, 2008 at NALT 5003.

19 A. 5003?

20 MR. MORAN: Jim, is that 503?

21 BY MR. WALKER:

22 Q. It's 503. I'm getting 5,000 ahead of  
23 me. It's 503.

24 A. 503. You scared me. I thought we were  
25 going to be here a while.

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1 Q. I wouldn't do that to you.

2 So we're at 503, and this is a letter

3 May 9, 2008 --

4 A. Uh-huh.

5 Q. -- to Andy Johnson from Kyle Young --

6 A. Yes, sir.

7 Q. -- potential modification to

8 conservation easement Weehaw Plantation.

9 Did you review this letter before your  
10 deposition?

11 A. I did.

12 Q. In this letter he talks about the  
13 various considerations that he understands the  
14 board would take into account based on some  
15 standards published by the Land Trust Alliance,  
16 correct?

17 A. Yes, sir.

18 Q. And he refers to that specifically in  
19 paragraph three, does he not?

20 A. He does.

21 Q. At that point Mr. Young goes through  
22 those considerations, and he has comments related  
23 to each one of those, does he not?

24 A. He does.

25 Q. Did North American Land Trust do its

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1 own evaluation of these considerations?

2 A. Absolutely.

3 Q. All right. Well, let's go to  
4 Mr. Young, and in particular let's talk about A  
5 first. It must benefit the public interest.

6 That's one of the considerations, is it  
7 not?

8 A. That's -- yep. Yes.

9 Q. He says, the Georgetown Hospital System  
10 is a not-for-profit hospital system, and I have  
11 provided a supplemental exhibit to this letter that  
12 addresses the clear and compelling public benefit  
13 this modification would produce.

14 The public benefit he's talking about  
15 is the benefit of having the hospital there,  
16 correct?

17 A. Yes, sir.

18 Q. Now, is it NALT's understanding that  
19 the public interest when referring to a  
20 conservation easement is referring to the  
21 ecological qualities of the property or anything  
22 that's in the public interest?

23 MS. TILLMAN: Object to the form.

24 THE WITNESS: Ecological qualities is  
25 what we would be most interested in.



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1 BY MR. WALKER:

2 Q. He was --

3 A. Excuse me.

4 Q. When we refer back to the treasury  
5 regulation, they're talking about the public  
6 interest in those qualities, too, correct --

7 A. Correct.

8 Q. -- through open space scenic and the  
9 preservation of habitat, correct?

10 A. Yes, sir.

11 Q. Mr. Young doesn't address that public  
12 interest, does he?

13 A. Does not seem to do that, no.

14 Q. And C says that the modification will  
15 not jeopardize the tax status of North American  
16 Land Trust. Mr. Young qualifies that consideration  
17 by saying, I'm not fully equipped to address this  
18 point and trust that you have your own tax advisors  
19 who can clarify this situation for you. However,  
20 Georgetown Hospital is a 501(c)(3) not-for-profit  
21 organization.

22 Did North American Land Trust consult  
23 its tax advisors to make sure that its tax status  
24 would not be jeopardized by entering the amendment?

25 A. That would be a customary process. I

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1 would expect that that did happen.

2 Q. I am asked -- I'm not asking you what  
3 you expect. There are a lot of times when people  
4 expect things of other people. I can tell you  
5 around this firm I expect certain things. Others  
6 expect things of me that don't always get done.

7 Do you know for a fact whether or not  
8 North American Land Trust consulted its tax  
9 advisors for a determination of whether this  
10 amendment removing 56.75 acres could potentially  
11 jeopardize the tax status of NALT?

12 MS. TILLMAN: Object to the form.

13 THE WITNESS: I do not know that for a  
14 fact.

15 BY MR. WALKER:

16 Q. In the file that I was provided, I have  
17 no documentation of that. Would you agree there's  
18 no documentation in the file of that?

19 A. I would. I would just make the comment  
20 that that might be attorney-client privilege,  
21 though, as well. Again, I'm not -- I'm not an  
22 attorney, so I don't know, but perhaps that's why  
23 it was not included. I don't know.

24 Q. Well, I am not asking what the  
25 substance of those opinions may have been. All I'm

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1 asking is whether the exercise was done.

2 A. I can't tell you for a fact. I can  
3 just explain what's customary.

4 Q. Again, we don't know if customs were  
5 followed here, right?

6 A. I'm sorry?

7 Q. We don't know if custom was followed  
8 here, do we?

9 A. Not for a fact.

10 Q. On F and G, the consideration he  
11 addresses is that the amendment is -- would be  
12 consistent with the conservation purpose, and there  
13 is a net benefit to the conservation value.

14 He goes on to say, I am sure that you  
15 would like to send your staff biologist to inspect  
16 the site, but our position is that we are taking  
17 the available development sites that are on the  
18 interior of the tract which are ecologically  
19 sensitive parcels and placing them under  
20 restrictions that prohibit further development or  
21 impact on these sites, and in return we are  
22 releasing approximately 56 acres of the eased  
23 property.

24 Mr. Carter, did NALT send a staff  
25 biologist to the site to inspect it before the

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1 amendment was entered? I did not see where that  
2 was done --

3 MS. TILLMAN: Object to the form.

4 BY MR. WALKER:

5 Q. -- but did they do that?

6 A. I cannot confirm.

7 Q. You have no knowledge that they sent a  
8 staff biologist to the site before the amendment  
9 was entered, do you?

10 A. I do not.

11 Q. He says that the -- the development  
12 sites, referring to the restrictive homesites, are  
13 ecologically sensitive parcels.

14 North American Land Trust did not send  
15 a biologist to the site to render a decision or  
16 come to a conclusion as to whether those sites were  
17 ecologically sensitive or not --

18 MS. TILLMAN: Object to the form.

19 BY MR. WALKER:

20 Q. -- did it?

21 A. I -- I don't know.

22 Q. You have no knowledge that it sent --

23 A. I have no knowledge, yeah.

24 Q. You have no knowledge that it sent a  
25 biologist --

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1           A.    I have no knowledge.

2           Q.    -- to determine whether it was  
3           ecologically sensitive or not, correct?

4           A.    Fair.

5           Q.    Then he goes on at the end of the  
6           paragraph, we certainly welcome a visit from your  
7           biologist to make a field report to investigate  
8           this issue, but we plan on abandoning further  
9           development activities or capabilities on the  
10          significant number of acres that are ecologically  
11          sensitive in exchange for property that surrounds  
12          an existing nine-acre commercial tract.

13                From that sentence we can conclude that  
14          he had no problem at all with NALT sending a  
15          biologist to inspect the property firsthand,  
16          correct?

17          A.    Correct.

18          Q.    At that time did NALT have a staff  
19          biologist that it could have dispatched to make  
20          that inspection?

21          A.    It had two staff biologists.  Also,  
22          Andy Johnson is a trained ecologist.  I can't  
23          confirm or deny whether he was there.  But he  
24          certainly would have been more qualified than those  
25          two to make these kinds of determinations.

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1           Q.    You have no knowledge that between  
2           when -- the time between when this letter was  
3           entered and the -- and when this letter was sent  
4           and the amendment was entered that Mr. Johnson  
5           visited the site to confirm or refute anything  
6           that's stated by Mr. Young, do you?

7           A.    I have --

8                   MS. TILLMAN:   Object to the form.

9                   THE WITNESS:   -- no personal knowledge.

10          BY MR. WALKER:

11           Q.    Nor do you know of the other two staff  
12           biologists doing the same, right?

13           A.    I do not.

14           Q.    Was there a staff biologist assigned to  
15           this area at that time?

16           A.    No.   Our staff biologists were located  
17           in the southeast, but it was not said -- you know,  
18           said, here, these are your projects, these are your  
19           projects.

20           Q.    Where were they located then?

21           A.    Peter Smith was domiciled in Boone,  
22           North Carolina, and Lee Echols would have been out  
23           of Atlanta, Georgia.

24           Q.    The next bit of correspondence is on  
25           the next page, which is NALT 505.   It's a letter of

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1 May 14, 2008, and it's from Mr. Stacy to  
2 Mr. Johnson. Dear Andy, per our numerous phone  
3 conversations, please find enclosed a letter from  
4 Kyle Young making an official request for the North  
5 American Land Trust to consider modifications to  
6 the conservation easement at Weehaw Plantation.

7 You understand that Mr. Stacy is  
8 referring to the letter we just went over?

9 A. Yes, sir.

10 Q. He also says right after that, also  
11 included for your reference and information is a  
12 communication from the Georgetown Hospital System  
13 regarding this process, copies of the real estate  
14 contracts that we have executed with the Young  
15 family which are contingent upon many things,  
16 including the organization's approval and a copy of  
17 the appraisal provided to me by the Young family  
18 dealing with the inurement question.

19 Do you know whether or not any person  
20 in particular reviewed those documents that were  
21 enclosed in Mr. Stacy's letter of May 14, 2008?

22 A. Andy Johnson would have reviewed those.

23 Q. What is Mr. Stacy referring to when he  
24 talks about the inurement question?

25 A. I think he's --

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1 MR. MORAN: Object to the form.

2 MS. TILLMAN: Objection. Yeah, sorry.

3 Object to the form.

4 BY MR. WALKER:

5 Q. All right. What do you -- what do  
6 you under -- under --

7 A. Insider dealing is private inurement.  
8 I think what the better phrase would have been,  
9 impermissible private benefit to the landowner is  
10 what they're trying to avoid here.

11 Q. Is -- is that your understanding of one  
12 of the precepts, that transactions should not inure  
13 to the benefit to the property owner?

14 A. Correct.

15 Q. And that's also something that's  
16 embodied in the IRS regulations, correct?

17 A. Absolutely.

18 Q. He goes on to say in the second  
19 paragraph, all these items are delivered to you per  
20 our conversations and your request in anticipation  
21 of your board meeting on May 16, 2008.

22 And that would be two days later,  
23 correct?

24 A. Correct.

25 Q. Did the board undertake to consider the



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1 proposed amendment at its May 16, 2008 board  
2 meeting?

3 A. It did.

4 Q. At the time the board considered the  
5 proposed amendment at its May 16, 2008 meeting,  
6 what due diligence had it done as part of its  
7 consideration of this request?

8 A. What was the board's due diligence?

9 Q. I would say what due diligence had NALT  
10 done because I understand the board is not out  
11 there doing it.

12 A. Yeah. Andy would have concluded at  
13 that point that there was no impermissible private  
14 benefit that would be conferred as a result of this  
15 transaction and that the conservation purposes --  
16 conservation purposes and values would have been  
17 enhanced. He would have needed to make those  
18 representations at the board meeting in order for  
19 his board colleagues to consider this proposal.

20 THE VIDEOGRAPHER: Mr. Walker, your  
21 microphone fell off.

22 THE WITNESS: It's not me this time.

23 BY MR. WALKER:

24 Q. Again, those are your assumptions based  
25 on standard practice?

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1 A. Absolutely.

2 Q. What we do know is that NALT had not  
3 done any type of ecological assessment of flora and  
4 fauna to determine the condition of that at the  
5 time the amendment was requested? It was relying  
6 on its earlier information, correct?

7 MR. MORAN: Object to the form.

8 MS. TILLMAN: Object to the form.

9 THE WITNESS: I don't know.

10 BY MR. WALKER:

11 Q. Did you find any current assessment of  
12 the ecological values of the property -- when I say  
13 current -- that was done between the time the  
14 amendment first got on the table in the summer of  
15 2007 and this board meeting in May 16, 2008, done  
16 by NALT's staff or anybody else?

17 A. No, I don't recall any of that being  
18 available in our files.

19 Q. I did not see that there was a separate  
20 memo prepared by NALT's staff doing a conservation  
21 value assessment before it went to the board. Are  
22 you familiar with any writing like that?

23 A. Not for this particular project, no.  
24 That is a customary part of our process now.

25 Q. Is it also true that NALT had not done

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1 a separate impact assessment by looking at the  
2 potential impacts of the hospital project and  
3 medical office buildings around it on that 56.75  
4 acres or collaterally on the adjoining east  
5 property?

6 MS. TILLMAN: Object to the form.

7 THE WITNESS: No, I don't know that to  
8 be true. I have no records of what Andy did to --  
9 to move that process forward.

10 BY MR. WALKER:

11 Q. And NALT also didn't do a comparison of  
12 the conservation values of the property with the  
13 56.75 acres under easement and with it -- with the  
14 easement not on the 56.75 acres, correct?

15 MS. TILLMAN: Object to the form.

16 THE WITNESS: I expect those things did  
17 happen or our board wouldn't have voted.

18 BY MR. WALKER:

19 Q. I asked about a written comparison.

20 A. Oh, written. I don't have anything  
21 written, no. I have not seen it.

22 Q. Are you aware of the provision in the  
23 conservation easement for Weehaw that addresses  
24 amendments?

25 A. No.

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1 Q. All right.

2 A. I mean, I'm not surprised to hear that  
3 there's one in there, but I don't -- I would have  
4 to look at it to refresh my memory.

5 Q. That would be standard, would it not?

6 A. It would be.

7 Q. If you would be so kind as to turn to  
8 page 62 and 63.

9 And I'll represent to you that the  
10 amendment provision starts at the bottom of 62.  
11 It's subpart nine. Take a second to look at it.

12 A. My memory is refreshed.

13 Q. Is the provision that's in the Weehaw  
14 easement concerning amendments a standard amendment  
15 provision?

16 A. It looks and appears to be standard.

17 Q. It says, grantor and grantee recognize  
18 that circumstances could arise which -- and then  
19 there's a blank -- this end, grantee and grantor  
20 shall mutually have the right in their sole  
21 discretion to agree to amendments to this  
22 declaration which are not inconsistent with the  
23 basic purpose of the declaration as stated in this  
24 document, provided, however, that grantee shall  
25 have no right or power to agree to any amendments

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1 hereto that would result in this declaration and  
2 declaration failing to qualify as a valid  
3 conservation easement under the act as the same may  
4 hereafter amended -- be hereafter amended or  
5 section 170(h) to the code as hereafter amended.

6 Is that correct?

7 A. Yes, sir.

8 Q. Are we then -- well, first of all, did  
9 you understand that the amendment that the board  
10 was considering in 2008 had to comply with this  
11 subsection F9?

12 A. Yes, sir.

13 Q. If we take it a little -- apart a  
14 little bit, the first requirement is that the  
15 amendment not be inconsistent with the basic  
16 purpose of the declaration as stated in this  
17 document, correct?

18 A. Correct.

19 Q. The conservation easement does state  
20 its basic purpose, doesn't it?

21 A. It does.

22 Q. If you would go to page 58, and that is  
23 page 5 of the conservation easement. You'll see a  
24 paragraph titled nine. It's the last part of B,  
25 about a third of the way down.

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1 Do you see that?

2 A. Yes.

3 Q. Subsection B9 of the conservation  
4 easement says, the parties recognize that this  
5 declaration cannot address every circumstance that  
6 may arise in the future, and the parties agree that  
7 the purpose of this declaration is to preserve the  
8 property predominantly in its present condition and  
9 to protect or enhance the property's environmental  
10 systems.

11 Did I read that correctly?

12 A. You did.

13 Q. When we're referring to the property,  
14 we are referring to the entirety of the acreage of  
15 Weehaw that was encumbered by this conservation  
16 easement in December 1995, are we not?

17 A. Property is capitalized. That's  
18 correct.

19 Q. That property would include this 56.75  
20 acres that NALT was being asked to release from the  
21 conservation easement, correct?

22 A. Yes.

23 Q. And we can gather from this explicit  
24 statement that the purpose was to preserve that  
25 property in its present condition and to protect or

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1 enhance its environmental systems, correct?

2 A. According to the words on the page,  
3 yes.

4 Q. Do you consider those words to be  
5 binding?

6 A. Yes, I do.

7 Q. Do you consider those to be laudatory  
8 objectives?

9 MS. TILLMAN: Object to the form.

10 BY MR. WALKER:

11 Q. Well, let me ask -- I'll rephrase it.  
12 That was a terrible question.

13 Do you consider that that purpose is  
14 consistent with the entire purpose of the  
15 conservation easement which is to preserve the  
16 property in a natural state subject to reserved  
17 rights?

18 MS. TILLMAN: Object to the form.

19 THE WITNESS: Yes.

20 BY MR. WALKER:

21 Q. The second part of the amendment  
22 provision states that the grantee shall have no  
23 right or power to agree to any amendments hereto  
24 that would result in this declaration failing to  
25 qualify as a valid conservation easement under the

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1 act -- that's the South Carolina Conservation  
2 Easement Act -- or section 170(h) of the code as  
3 hereafter amended.

4 We can conclude -- well, first of all,  
5 that is a limitation on North American Land Trust's  
6 ability to agree to an amendment, correct?

7 MS. TILLMAN: Object to the form.

8 THE WITNESS: Sounds that way.

9 BY MR. WALKER:

10 Q. It's worded to restrict the authority  
11 of the land trust, is it not, so that it does not  
12 have the authority to agree to an amendment that  
13 would result in the easement violating section 170  
14 of the code?

15 MS. TILLMAN: Object to the form.

16 BY MR. WALKER:

17 Q. 170(h), correct?

18 A. Correct.

19 MS. TILLMAN: Object to the form.

20 BY MR. WALKER:

21 Q. That's the way you read it?

22 A. Yes, sir.

23 Q. You're here for North American Land  
24 Trust. That's the way North American Land Trust  
25 reads it, too, does it not?



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1 MS. TILLMAN: Object to the form.

2 THE WITNESS: It does.

3 BY MR. WALKER:

4 Q. Did the amendment in allowing the 56.75  
5 acres to be converted into a hospital campus with  
6 hospital and medical office buildings preserve that  
7 56.75 acres predominantly in the condition it was  
8 in in December 1995?

9 MS. TILLMAN: Object to the form.

10 THE WITNESS: On its surface, no, but  
11 it was offset by the restrictions that are put on  
12 the development areas inside of the parcels. So it  
13 wasn't offset.

14 BY MR. WALKER:

15 Q. I understand that you maintain that  
16 there was an offset. That was not my question.

17 My question was whether or not the  
18 significant development that was allowed on the  
19 56.75 acres to Georgetown Hospital, whether that  
20 would keep the property in predominantly the same  
21 condition it was in in December 1995?

22 MS. TILLMAN: Object to the form.

23 THE WITNESS: I think there's some  
24 interpretation there, predominantly. Those  
25 interior areas weren't preserved, and now they are.

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1 BY MR. WALKER:

2 Q. I'm not talking about the interior  
3 areas. I'm talking about --

4 A. Predominantly. So I think there's some  
5 interpretation with that word.

6 Q. So you were saying that it really  
7 doesn't matter if the 56-point -- well, let me  
8 rephrase that.

9 A. I didn't say that.

10 Q. Can we agree that if the development  
11 occurred, that the 56.75 acres would not  
12 predominantly be in the same condition they were in  
13 in December 1995?

14 MS. TILLMAN: Object to the form.

15 THE WITNESS: That 56 acres, but that's  
16 part of the larger property, much, much larger  
17 property, that also included building areas.

18 BY MR. WALKER:

19 Q. But we can agree that the 56.75 acres,  
20 if that hospital and the other medical office  
21 buildings and accessory uses were completed, that  
22 it wouldn't be anything close to the condition it  
23 was in in 1995, would it?

24 MS. TILLMAN: Object to the form.

25 THE WITNESS: If we can agree that the

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1 building areas also wouldn't be close to the  
2 condition that they would have been permitted to be  
3 used.

4 BY MR. WALKER:

5 Q. I'm not asking about the other parts of  
6 the property. I'm -- I'll object to that --

7 A. But they're -- they're related, though,  
8 so I'm not -- I'm not going to just focus on the  
9 56. It happened because of that, so I don't know  
10 how you can separate those.

11 Q. All right. You can say -- all right.  
12 We can -- we can go the way you're looking at it.

13 So you're saying the obliteration of  
14 the ecological values through the development on  
15 the 56.75 acres was offset by benefits by  
16 eliminating the five homesites and the recreational  
17 areas?

18 A. That was --

19 MS. TILLMAN: Object to the form.

20 THE WITNESS: That was the position  
21 North American Land Trust board took when they  
22 decided to approve the amendment.

23 BY MR. WALKER:

24 Q. What standard was used in making that  
25 determination? How did that -- what -- what did

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1 North American Land Trust use to balance these two  
2 things? You have the development of 600,000 square  
3 feet, possibly, on the 56.75 acres. You have the  
4 elimination of five dwellings and a recreation area  
5 of no more than three acres.

6 What -- what standard did it look to to  
7 say, okay, the conservation values actually are  
8 benefited by this deal?

9 A. Andy Johnson in his capacity as a  
10 professional ecologist was qualified to make that  
11 determination and did so.

12 Q. So you're saying you believe he made a  
13 subjective determination?

14 MS. TILLMAN: Object to the form.

15 THE WITNESS: Sure.

16 BY MR. WALKER:

17 Q. We don't know that he referred to any  
18 standard on the outside that said -- that guided  
19 his assessment -- his personal assessment of where  
20 the conservation values came out, whether they were  
21 impaired or enhanced, do we?

22 MS. TILLMAN: Object to the form.

23 THE WITNESS: I don't have that  
24 information, no.

25 BY MR. WALKER:

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1 Q. Do you know whether or not North  
2 American Land Trust obtained a legal opinion as to  
3 the steps that are necessary under the treasury  
4 regulations to extinguish a permanent conservation  
5 easement on a portion of the property?

6 MR. MORAN: Object to the form.

7 MS. TILLMAN: Object --

8 THE WITNESS: I do not know.

9 BY MR. WALKER:

10 Q. You are aware that the treasury  
11 regulations do, in fact, address extinguishment of  
12 an easement, do you not?

13 A. I'm familiar --

14 MR. MORAN: Object to the form.

15 THE WITNESS: -- that there's language  
16 regarding that.

17 BY MR. WALKER:

18 Q. If you would please turn to exhibit 6.

19 A. On page?

20 Q. Exhibit 6, and it would be page 14.  
21 There's some page numbers in the lower right corner  
22 that are shaded. They're kind of difficult to see.  
23 So you go to exhibit 6.

24 A. Oh, pardon me.

25 Q. There's a tab.

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1           A.     Exhibit 6.   Got you.

2                     And you're asking me to look at?   I'm  
3     sorry.

4           Q.     If you would go to page 14.   There's  
5     some highlighted language at the bottom of that  
6     page that's subsection six.

7                     Do you see that?

8           A.     I do.

9           Q.     It says -- the treasury  
10    regulations says, extinguishment, in general, if a  
11    subsequent unexpected change in the conditions  
12    surrounding the property that is the subject of a  
13    donation under this paragraph can make it  
14    impossible or impractical the continued use of the  
15    property for conservation purposes, the  
16    conservation purpose can nonetheless be treated as  
17    protected in perpetuity if the restrictions are  
18    extinguished by judicial proceeding and all the  
19    donee's proceeds determined under paragraph  
20    (g)(6)(ii) of this section from a subsequent sale  
21    or exchange of property are used by the donee  
22    organization in a manner consistent with the  
23    conservation purpose -- purposes of the original  
24    contribution.

25                     Did, to your knowledge, North American

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1 Land Trust consider this specific section of the  
2 treasury regulation addressing extinguishment of  
3 permanent conservation easements?

4 A. I'm not sure if they consulted this  
5 actual provision or not.

6 Q. There was no subsequent unexpected  
7 change in the conditions surrounding the property  
8 that made it impossible or impracticable for the  
9 property to be -- continued to be preserved for  
10 conservation purposes, was there?

11 MR. MORAN: Object to the form.

12 MS. TILLMAN: Object to the form.

13 THE WITNESS: Can't confirm or deny  
14 that.

15 BY MR. WALKER:

16 Q. Well, let's ask it differently. Are  
17 you aware of any unexpected change in the  
18 conditions surrounding the property that made it  
19 impossible or impracticable for the continued use  
20 of the property to be preserved under the terms of  
21 the easement?

22 A. I'm not.

23 Q. To your knowledge, was there any  
24 discussion within NALT of the potential need to  
25 have a judicial proceeding to eliminate the

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1       easement on this 56.75 acres?

2                   MS. TILLMAN: Object to the form.

3                   THE WITNESS: I'm not familiar with any  
4       of those conversations.

5       BY MR. WALKER:

6                   Q. You were present at the board meeting  
7       on May 16, 2008, were you not?

8                   A. I was.

9                   Q. Were you present for the discussion  
10      about the proposed amendment?

11                  A. I was.

12                  Q. Do you recall any discussion at all  
13      before the board in open session, not executive  
14      session but open session, about whether the  
15      amendment complied with the treasury regulations  
16      including the section on extinguishment?

17                  A. I don't recall any of those  
18      conversations.

19                  Q. Could it have been overlooked?

20                  A. No. I think this section, the way that  
21      we would interpret it is if it was a condemnation  
22      by a public entity where there was no offset. In  
23      this circumstance there was an offset.

24                  Q. Where's condemnation mentioned in six,  
25      extinguishment?



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1           A.     Again, I'm giving you my interpretation  
2     of this. This is how we would read it, if there  
3     was no offset, and I'm giving an example of how  
4     that might work. Occasionally there are public  
5     entities that need to condemn or, i.e., extinguish  
6     portions of a conservation easement.

7           Q.     And condemnation is through judicial  
8     proceedings, correct?

9           A.     Correct. And that's where that comes  
10    into there, and then there would be an offset in  
11    terms of a monetary compensation. That does happen  
12    from time to time.

13          Q.     Well, this -- this doesn't talk about  
14    that. It talks about an unexpected change in  
15    condition surrounding the property, does it not?

16          A.     That's what it says.

17          Q.     That's what it's addressing?

18          A.     Yeah.

19          Q.     Can we agree that you cannot -- North  
20    American Land Trust cannot identify any change in  
21    those conditions, correct?

22                 MS. TILLMAN: Object to the form.

23                 THE WITNESS: I cannot confirm that.  
24    I -- I don't know what they were able to document  
25    at the time of this transaction.

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1 BY MR. WALKER:

2 Q. Well, you're here as the designated  
3 person to testify --

4 A. Yes, sir.

5 Q. -- to these things, and you have no  
6 knowledge of any change in the surrounding property  
7 that made it impractical or impossible to continue?

8 A. I do not have that knowledge.

9 Q. The easement itself has a similar  
10 provision, does it not?

11 And I'll direct you to NALT page 62,  
12 paragraph F6. It's near the top of the page.

13 Do you see that?

14 A. I do.

15 Q. It says, when a change in conditions  
16 gives rise to the extinguishment of this  
17 declaration or a material term or provision hereof  
18 by judicial proceeding, the grantee on any  
19 subsequent sale, exchange or involuntary conversion  
20 of the property shall be entitled to a portion of  
21 the proceeds of sale equal to the greater of, and  
22 then it goes on to discuss various formulas or  
23 proportions.

24 There was a sale of the property -- the  
25 56.75 acres, was there not?

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1 A. There was.

2 Q. The parties had purported to agree to  
3 extinguish the easement on that 60 -- 56.75 acres,  
4 correct?

5 MR. MORAN: Object to the form.

6 MS. TILLMAN: Object to the form.

7 THE WITNESS: They agreed to an  
8 exchange that involved partial extinguishment of  
9 some of the easement area --

10 BY MR. WALKER:

11 Q. Yeah.

12 A. -- but what they agreed to was an  
13 exchange.

14 Q. They agreed to -- all right. We'll get  
15 to that in a minute.

16 But there was a sale. Did North  
17 American Land Trust consider that it was entitled  
18 to a portion of the proceeds of the sale?

19 A. I don't know what the board considered  
20 at that time. Again, I would relate this to a  
21 condemnation. That's why this language was put in  
22 there, to deal with condemnations, which are pretty  
23 conventional things. So this is how that proceeds  
24 clause would -- that's how the money would be split  
25 up between the landowner and the land trust as

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1 required by the treasury regs.

2 Q. Well, that's an interesting aside  
3 because the easement itself actually directly  
4 addresses condemnation, doesn't it?

5 A. I don't know.

6 Q. Let's look at the next paragraph.  
7 Seven, do you see that?

8 A. I do.

9 Q. Whenever all or a part of the property  
10 is taken by exercise of eminent domain, by public,  
11 corporate or other authority, so as to aggregate  
12 the restrictions imposed by this declaration, the  
13 grantor and grantee shall join in appropriate  
14 actions at the time of such taking to recover the  
15 full value of the taking and all incidental or  
16 direct damages.

17 Can we conclude from the fact -- or  
18 wouldn't you conclude from the fact that paragraph  
19 seven addresses condemnation, that paragraph six is  
20 addressing when there is a -- an extinguishment  
21 based on a change in conditions as opposed to  
22 condemnation?

23 MS. TILLMAN: Object to the form.

24 THE WITNESS: No, I think they're  
25 connected, and I don't know if this is -- the

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1       respective rights of the grantor and grantee set  
2       forth in paragraph eight above.

3       BY MR. WALKER:

4               Q.     That's on the splits of the proceeds,  
5       correct? That's what that's addressing.

6               MS. TILLMAN: Object to the form.

7               THE WITNESS: Oh, ask it again, please.  
8       This is pretty heavy legalese. I'm trying not to  
9       get out of my league here.

10      BY MR. WALKER:

11              Q.     I'm not asking you to interpret. I'm  
12      asking you to attest whether or not paragraph six,  
13      F6, addresses when there's a change in conditions  
14      giving rise to the extinguishment of the  
15      declaration?

16              A.     That's what the words on the page say.

17              Q.     Versus seven which addresses when any  
18      part of the property is taken by the exercise of  
19      eminent domain?

20              A.     Yeah --

21              MS. TILLMAN: Object to the form.

22              THE WITNESS: -- I just don't think  
23      they're connected. But, you know, that's me. The  
24      proportion share, you're going to need to figure  
25      that out when there's an eminent domain, and

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1 section six describes how that happens. It's  
2 actually very, very important from the IRS'  
3 perspective because they've thrown out easements  
4 when proceeds clause are not drafted correctly.

5 BY MR. WALKER:

6 Q. Understood. That's a requirement of  
7 the IRS, is it not --

8 A. It is.

9 Q. -- that the easement itself have a  
10 correct allocation of proceeds if the easement is  
11 extinguished by condemnation or otherwise so that  
12 the recipient organization gets its share in  
13 proportion to the value -- that the value of the  
14 easement had to the value of the property at the  
15 time of the donation, correct?

16 A. Yes --

17 MS. TILLMAN: Object --

18 THE WITNESS: -- sir.

19 MS. TILLMAN: -- to the form.

20 BY MR. WALKER:

21 Q. Is that correct?

22 A. It is.

23 Q. Next we're going to talk about the  
24 board meeting where this was considered. The full  
25 board minutes, Mr. Carter, appear at NALT 981 to

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1 983. And by the time we get this deep into the  
2 documents because of the repetition, they're not --  
3 I didn't include all the pages.

4 Do you have 981 in front of you?

5 A. I do.

6 Q. Do you recognize the document that is  
7 on 981 and 982?

8 A. I do.

9 Q. What is this?

10 A. This is an excerpt of the board minutes  
11 prepared by the secretary of the board.

12 Q. Who is the secretary of the board?

13 A. At that time it was George Asimos.

14 Q. Have you reviewed these minutes in  
15 preparation for the deposition?

16 A. I have.

17 Q. Are the minutes accurate to the best of  
18 your knowledge based on your review of the records  
19 and your presence at the board meeting on May 16 --

20 A. To the best of my knowledge, yes.

21 Q. -- 2008?

22 Who presented the proposal to the  
23 board?

24 A. Andrew Johnson.

25 Q. In the presentation he made to the

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1 board reflected in these minutes, he does not  
2 address the amendment provision in the conservation  
3 easement, does he?

4 A. Not in these minutes.

5 MS. TILLMAN: Object to the form.

6 BY MR. WALKER:

7 Q. Nor does he address the conservation  
8 purpose as explicitly stated in the conservation  
9 easement, does he?

10 A. It's not --

11 MS. TILLMAN: Object to the form.

12 THE WITNESS: It's not documented in  
13 these textual minutes that were prepared.

14 BY MR. WALKER:

15 Q. He also -- the minutes also do not  
16 reflect any reference by him to whether or not the  
17 amendment would comply with the IRS regulations,  
18 does he?

19 A. It does not.

20 Q. He goes on -- in these minutes it says  
21 that Mr. Johnson reported -- and I'm going down  
22 about two-thirds of the way down -- one of the --  
23 one of the conservation benefits of the amendment  
24 would be the consolidation or reduction and  
25 fragmentation of the conservation area and the



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1 resulting benefits ecologically.

2 I did not see anything in writing, any  
3 study, any assessment, any evaluation, before the  
4 board met that addresses consolidation or reduction  
5 in fragmentation of the conservation area. Are you  
6 aware of any such study, analysis or evaluation --

7 MS. TILLMAN: Object to the form.

8 THE WITNESS: Not any --

9 BY MR. WALKER:

10 Q. -- written?

11 A. Not anything that's written, no.

12 Q. Isn't it also true that he did not  
13 address the intensity of the development of 600,000  
14 square feet of hospital and office on the 56.75  
15 acres?

16 MR. MORAN: Object to the form.

17 MS. TILLMAN: Object to the form.

18 THE WITNESS: I don't know that that's  
19 not true.

20 BY MR. WALKER:

21 Q. You don't know that that's not true?

22 A. You asked if it was true, and I'm  
23 saying I don't know if that's not true.

24 Q. The minutes don't reflect that he ever  
25 addressed the intensity of the --

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1 A. You're talking about the minutes?

2 Q. I'm talking about the minutes.

3 A. The minutes don't say that, no.

4 Q. The accurate minutes do not reflect  
5 that he addressed the intensity of the plan  
6 development on the site?

7 MS. TILLMAN: Object to the form.

8 THE WITNESS: They're not noted in the  
9 minutes, which is a snapshot of a much longer  
10 discussion.

11 BY MR. WALKER:

12 Q. The minutes are to capture the key  
13 points, are they not?

14 A. They are.

15 Q. Are you going to testify that you have  
16 a specific recollection of Mr. Johnson  
17 aggressing -- addressing the -- the impacts of the  
18 potential development of the 56.75 acres?

19 A. No, I don't have a recollection of that  
20 particular board meeting. Way too long ago. I  
21 also can't confirm that it did not happen.

22 Q. Now I'm going to have to ask this  
23 question.

24 A. Sure.

25 Q. You don't have any recollection that it

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1 Q. Are you aware of anything in the file?

2 A. I did not do any of that analysis,  
3 so...

4 MS. TILLMAN: Object to the form.

5 THE WITNESS: In fact, it's not in the  
6 file --

7 BY MR. WALKER:

8 Q. That just seems to be a conclusion  
9 without a factual basis. Would you agree with  
10 that?

11 MS. TILLMAN: Object to the form.

12 MR. MORAN: Object to the form.

13 THE WITNESS: I would not.

14 BY MR. WALKER:

15 Q. Well, where are the facts in the NALT  
16 record to substantiate that?

17 A. I don't know that we're required to  
18 keep those records. It was a long time ago back  
19 then, and Andy was -- had his own process and way  
20 of describing and representing things. So I don't  
21 know that any of that is a requirement. Andy would  
22 have made those representations as a 50-year  
23 professional ecologist. I know the board had a lot  
24 of confidence and trust in his determination, so  
25 I -- I wouldn't think that just because those

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1 materials aren't available that that doesn't mean  
2 it didn't happen or that there wasn't due  
3 diligence.

4 Q. Well, we have no record of that  
5 happening, do we?

6 A. You have no physical record.

7 Q. Written record?

8 A. Yeah, it's not available. It would be  
9 inconsistent with our --

10 Q. Are --

11 A. -- our organization --

12 Q. -- do you know of any --

13 A. -- of over 25 years.

14 Q. Do you know of any records that were  
15 thrown away related to this file?

16 A. I don't, no. No recollection, no.

17 Q. We're relying on the file being  
18 complete. Do you have information that it's not  
19 complete?

20 A. No. Andy passed away in 2021, so I'm  
21 not available to ask him how he would have managed  
22 his files before I came into the position of  
23 president of North American Land Trust.

24 Q. You did, though, become involved in the  
25 files when you put together the baseline

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1           A.     His office. Well, he had an assistant,  
2     Susan Levin, who just actually retired. That was  
3     his personal assistant. So he would lean on Susan  
4     a lot to help keep him organized. But he was not  
5     the best organizer.

6           Q.     Okay. And to your knowledge, was there  
7     any point in -- in time of when the North American  
8     Land Trust start scanning paper records or -- or  
9     anything like that?

10          A.     Yeah. Certainly, you know, the digital  
11     world started to evolve, as my career started in  
12     2001. And I think that the point that I can  
13     definitely recall when things took a turn, when our  
14     organization was ransomed or hacked by an outside  
15     source. That happened in 2016. We were taken  
16     offline for a couple of weeks and had to pay a  
17     Bitcoin ransom to get our information back. And at  
18     that point it became very real and apparent to us  
19     that we needed to implement a more robust records  
20     retention system and begin to scan in, you know,  
21     hard copy documents and -- and create a more  
22     durable, reliable system.

23          Q.     And tell me a little bit about that  
24     ransom -- ransom experience. Did NALT -- does NALT  
25     know whether it lost data?

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1           A.    We don't know. We'll never be able to  
2           know. We were able to get some data back, but we  
3           were highly compromised. There was definitely data  
4           that we did lose for sure and were never able to  
5           get back.

6           Q.    And that was in 2016?

7           A.    I believe so, right around that time.

8           Q.    Okay. Did -- did Andy Johnson do a lot  
9           of emailing?

10          A.    He was more of a phone guy, sporadic  
11          emails. And his vision was very, very poor.  
12          Actually he was almost blind at the end. But you  
13          will see in the records Andy -- Andy's emails,  
14          because they were often misspelled and misplaced,  
15          and you could tell he was somebody that was having  
16          eye challenges.

17          Q.    Uh-huh.

18          A.    But no, he did not email a lot.

19          Q.    Okay. How -- how about, you know,  
20          along the same lines because of his eye challenges,  
21          would you describe him as -- as dwelling more in  
22          documents or dwelling in firsthand relationships?

23          A.    Firsthand relationships.

24          Q.    To -- to your knowledge did -- did Andy  
25          visit Weehaw Plantation?

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1 for future conversations.

2 Q. Did -- to your knowledge did Andy  
3 Johnson keep any -- any files or documents in his  
4 house?

5 A. He may have.

6 Q. Is his house still there?

7 A. It is. But I would think it would be  
8 extremely limited. It's just Andy was not  
9 organized, so nothing would surprise me is what I'm  
10 trying to tell you. I don't think he made it a  
11 regular habit of trying to bring working files  
12 home, but it wouldn't surprise me.

13 Q. So let's talk about the 2008 amendment  
14 as well because that's another snapshot in time  
15 that --

16 A. Yes, ma'am.

17 Q. -- that Trenholm was talking about,  
18 well, there -- there are not these documents, I --  
19 I think.

20 And, again, to your knowledge does NALT  
21 still have every piece of paper surrounding the  
22 2008 amendment at Weehaw Plantation?

23 A. No.

24 MR. WALKER: Object to the form of the  
25 question.

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1 BY MS. TILLMAN:

2 Q. And -- and why don't you think so?

3 A. Based on my, you know, long tenure at  
4 NALT, 23 years knowing Andy, knowing his  
5 personalities, it would be consistent with what I  
6 know about the history and the process.

7 Q. And 2008 would have been 15 years ago.  
8 If this lawsuit had been filed in 2010 or 2011,  
9 would it -- would it have been likely that NALT  
10 would have been able to lay its hands on -- on much  
11 more documentation --

12 MR. WALKER: Object to the --

13 BY MS. TILLMAN:

14 Q. -- surrounding this amendment?

15 MR. WALKER: Object to the form of the  
16 question.

17 THE WITNESS: That would be my  
18 expectation, yes.

19 BY MS. TILLMAN:

20 Q. And if this lawsuit had been filed in  
21 2011 or 2012, shortly after MST bought its  
22 property, would Andy Johnson be available to -- to  
23 testify firsthand to -- to his considerations as to  
24 the 2008 amendment that's the subject of this  
25 lawsuit.



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1           A.    He loved this stuff.  He wouldn't have  
2 missed it for a moment.  Yes, he would have, to  
3 answer your question.

4           Q.    How serious was Andy Johnson about the,  
5 you know, conservation purposes of this easement on  
6 Weehaw Plantation?

7           A.    Very serious, and I think the record  
8 shows that overall.  There was a lot of due  
9 diligence and -- and conversations and staff  
10 participation and board participation.  Andy was  
11 very transparent, and he wanted to make sure that  
12 his board colleagues were aware and -- and, you  
13 know, had the right information to be able to make  
14 a -- a collective decision about moving forward.

15          Q.    Would Andy Johnson have -- have rubber  
16 stamped an amendment to a conservation easement,  
17 either at Weehaw or anywhere?

18          A.    No, Andy --

19               MR. WALKER:  Object to the form of the  
20 question.

21               THE WITNESS:  No, Andy was also -- and  
22 I believe at the time of Weehaw, he was the vice  
23 president, so he wasn't authorized to sign  
24 conservation easements.  John Halsey signed the  
25 first one.  I don't -- maybe Andy did -- there was

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1 A. Yes, that's correct.

2 Q. And I think Trenholm described LTA as  
3 kind of the premier organization in -- in America  
4 on -- on land trust practices and procedures?

5 A. That's how he described it.

6 Q. That's right.

7 And -- and in 2008, anyway, it looks  
8 like from these minutes that -- that NALT was  
9 looking to LTA for guidance?

10 A. Sure.

11 Q. And so tell me a little bit about these  
12 amending conservation easements and seven guiding  
13 amendment principles.

14 The first question I want to ask you  
15 about them is, if amendments were per se taboo  
16 under 170(h), why would the premier organization  
17 for -- for land trust procedures and policies, the  
18 LTA, why would it have seven guiding amendment  
19 principles at all?

20 A. Yeah. I don't know that they were  
21 taboo. You hear that from time to time. I think  
22 that's kind of innuendo. Land Trust Alliance going  
23 back to -- all the way to that time, and also  
24 We Conserve PA, both offer guidance to their land  
25 trust membership on how to amend conservation

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1 easements. So it's out there. It's in the open.

2 And in fact the IRS released a guidance  
3 in 2020 which also suggested that having an  
4 amendment clause in your conservation easement  
5 doesn't automatically defeat 170(h). There's other  
6 parts to that.

7 But I think both the trade groups and  
8 the IRS recognize that amendments are a pretty  
9 conventional part of the land trust process and  
10 world.

11 Q. All right. And -- and how about with  
12 NALT, does NALT -- is -- is this Weehaw amendment  
13 the only amendment to a conservation easement  
14 that -- that NALT has ever done?

15 A. No. We've done many amendments.

16 Q. How many?

17 A. Over a hundred.

18 Q. Okay. Over a hundred amendments to  
19 conservation easements. Have you reported all  
20 those amendments to the IRS?

21 A. We are required to do so and do that on  
22 our Form 980.

23 Q. And you testified earlier that you  
24 certainly would have reported the Weehaw amendment  
25 to the IRS --

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1 A. Absolutely.

2 Q. -- is that correct?

3 A. Yes, ma'am.

4 Q. In any of the years that you were --  
5 that North American Land Trust was audited, which I  
6 think we said was 2004, 2014 and 2018 --

7 A. Correct.

8 Q. -- had -- had NALT done amendments  
9 that -- that the IRS would have been aware of as  
10 part of its audit?

11 A. Absolutely.

12 Q. Okay. Did -- did -- has the IRS or did  
13 the IRS ever question or raise concerns to NALT  
14 about amendments --

15 A. I do not recall that.

16 Q. -- to the conservation easements?

17 A. No.

18 Q. So no?

19 A. No. I -- I hedge because the 2014 has  
20 a lot of information in there. Trenholm and I were  
21 talking about that earlier. I can't speak to  
22 everything that they mention there, but I do not  
23 believe that evidence came up. I have no  
24 recollection of that.

25 Q. And this kind of goes without saying,

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1 but I'll get it on the record. The IRS has -- has  
2 never revoked the land trust 501(c)(3) status; is  
3 that correct?

4 A. No, ma'am.

5 Q. Notwithstanding the fact that the land  
6 trust has done a hundred amendments or so to  
7 conservation easements in its -- in its time?

8 A. (Witness moves head up and down.)

9 Q. So let's talk about the seven guiding  
10 amendment principles from LTA. Do you know them  
11 well enough to rattle them off? I can tell you I  
12 think they're on the very next page of NALT 849.

13 A. Yeah. I'm familiar.

14 Q. Okay. Kind of talk through what a land  
15 trust typically does or -- and what the North  
16 American Land Trust specifically does when they're  
17 evaluating proposed amendments to conservation  
18 easements.

19 A. Right. Well, in contemporary times we  
20 use what's called a conservation benefit analysis,  
21 and this is an internal process. It works much  
22 like a SWOT analysis if you're familiar with that,  
23 strengths, opportunities, threats and weaknesses or  
24 something like that. But we will run through a  
25 process to identify all of those boxes, and then

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1 hopefully that will begin to tell us whether the  
2 risk profile of a particular amendment is such that  
3 we would want to pursue it.

4 So it is a detailed internal process  
5 that we take on now, and all of that information is  
6 saved as part of our records retention, so we have  
7 that available to document our process in -- in  
8 evaluating the merits of a potential amendment  
9 proposal.

10 Q. And -- and at the time, though -- and  
11 that's your practices now --

12 A. Yes, ma'am.

13 Q. -- as I understand it, but it looks  
14 like would it be fair to say that in 2007, 2008,  
15 based on -- well, that -- that NALT was -- was  
16 really looking to the LTA's --

17 A. Yes.

18 Q. -- guidance?

19 A. Yeah, this was kind of the foundation  
20 for where our policy is today. It's -- it has a  
21 lot more information and context in our  
22 board-approved policy which is updated every three  
23 years. But a lot of what you're seeing here, you  
24 know, is part of that.

25 Q. Has -- has NALT's thinking on

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1 amendments to conservation easements evolved over  
2 time?

3 A. Oh, yeah for sure. Yeah.

4 Q. Tell me about that. Just -- just give  
5 me a broad overview of how it's evolved, and try  
6 and anchor it to a time period while you're  
7 talking.

8 A. Well, high level, you know, when I  
9 started, we were not familiar with any litigation  
10 for conservation easements, whether it was  
11 amendments or we just don't like the easement.  
12 There was no case law or litigation out there to  
13 help guide our process, procedures and policies.  
14 That has changed a lot over the course over the  
15 past 23 years. There has been a lot of litigation.  
16 There has been IRS guidance documents. I mentioned  
17 the one in 2020. So now there is a lot of publicly  
18 available information to give us more data on how  
19 we should proceed with these.

20 There's also another example of the  
21 Buck case which -- which was a major case that  
22 everyone I'm sure is aware of that talked about the  
23 exchanging of property. That happened a few years  
24 ago. Obviously that information was not available  
25 when the Weehaw conservation -- or conservation

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1       easement amendment happened. But -- but major  
2       events like that help guide our process and  
3       evolution of the organization going forward.

4               Q.     And -- and specifically evolution of  
5       your practices and -- and kind of policies with  
6       regard to amendments; is that correct?

7               A.     Correct.

8               Q.     To your knowledge in 2008 had -- had  
9       the IRS issued any kind of guidance, or were  
10      there -- were there cases out there about  
11      amendments specifically?

12              A.     No, ma'am.

13              Q.     Okay. So -- so it was reasonable for  
14      NALT in -- in 2008 to rely on this LTA practices  
15      and procedures and policies?

16              A.     Very conventional, yes.

17                      MR. WALKER: Object to the form of the  
18      question.

19      BY MS. TILLMAN:

20              Q.     And it looks like NALT's board also  
21      relied on those seven guiding principles of  
22      amendment when it was evaluating the Weehaw  
23      amendment; is that --

24              A.     It --

25              Q.     -- correct?



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1           A.     It did.   And you note that they make  
2     reference to that board in the board report which  
3     is part of our official business records and was  
4     provided to the board of directors at that time.

5           Q.     And, again, if there are not, you know,  
6     paper documents, ecological documents, biology  
7     reports in NALT's records now surrounding that  
8     amendment that happened 15 years ago, does that  
9     necessarily mean that they never existed?

10           MR. WALKER:   Object to the form.

11           THE WITNESS:   No.

12     BY MS. TILLMAN:

13           Q.     Are red-cockaded woodpeckers a part of  
14     the 1995 conservation easement on Weehaw  
15     Plantation?

16           A.     No, ma'am.

17           Q.     Would NALT have any obligation towards  
18     red-cockaded woodpeckers or any enforceable  
19     authority as far as red-cockaded woodpeckers go as  
20     to the 1995 conservation easement on Weehaw  
21     Plantation?

22           A.     I'm not sure how the -- the  
23     conservation easement deed would necessarily guide  
24     that, but certainly we would have an ethical  
25     responsibility to take that into account and

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1 perspective, you know, as the property is chopped  
2 up and -- and certain habitats and -- you know, are  
3 eliminated, the species will -- will stop using  
4 that. Obviously the more property that doesn't  
5 have anthropogenic evidence, roads and houses and  
6 trees running through, is going to be more suitable  
7 for -- for wildlife that -- that like that kind of  
8 habitat. So fragmenting the property has -- can --  
9 can have negative results for habitat and wildlife.

10 Q. Okay.

11 A. And then the other side of it is the  
12 ownership perspective from a habitat -- or from a  
13 fragmentation perspective.

14 Q. Is -- is it costly for NALT to monitor  
15 conservation easements?

16 A. It is.

17 Q. What percentage of your budget goes to  
18 monitoring?

19 A. We report it on our 990. It's a --  
20 it's a large number. I believe that we are  
21 averaging around \$350,000 annually expended to run  
22 our monitoring program.

23 Q. And a representative from NALT as part  
24 of the monitoring would've -- was -- would have  
25 visited Weehaw Plantation at least annually --

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1 A. Yes.

2 Q. -- is that correct?

3 A. Regularly. I do see that there is some  
4 voids early on with the monitoring which wouldn't  
5 be unexpected. We're at a place now where our  
6 monitoring policy requires NALT to monitor  
7 annually. Back then we were looking at just the  
8 treasury -- treasury regulations which only require  
9 regular monitoring.

10 Q. And -- and I noticed Lee Echols' name  
11 come up a lot in those monitoring reports. Who is  
12 Lee Echols at NALT? What is his position?

13 A. He was a conservation biologist. He  
14 left the organization probably two or three years  
15 ago, but he was a conservation biologist.

16 Q. I hate to jump around, but I'm going  
17 to. Let's look at NALT page 758. And -- and  
18 really 758 is a snapshot in the middle of a lot of  
19 drafts of the amendment to the conservation  
20 easement. Trenholm was -- was jumping around a  
21 little. I want to be clear that I'm -- I'm -- in  
22 the question I'm asking, I'm encapsulating all the  
23 drafts he was asking you questions about.

24 Is it NALT's understanding and your  
25 understanding that -- that the drafting of -- of

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1 this amendment to the conservation easement was a  
2 collaborative process?

3 A. Very much so.

4 Q. Who -- who were the collaborators on  
5 it?

6 A. Primarily Andrew Johnson as the  
7 president of North American Land Trust and Dan  
8 Stacy as the representative for the landowner.

9 Q. Did -- what about the Youngs, were --  
10 were they involved? Or a -- a represent --

11 MS. BAUM: Objection.

12 BY MS. TILLMAN:

13 Q. -- representative of the Youngs?

14 A. I don't recall.

15 Q. Okay. And, you know, stepping back  
16 from all the drafts, although keep your finger on  
17 those pages, about -- for how -- how long did NALT  
18 consider this amendment? Do you -- do you have any  
19 knowledge on that?

20 A. Seems like it's almost two years to a  
21 year and a half, somewhere in that area. I  
22 understand from the file that Andy was first  
23 notified in the summer of 2007, and the amendment  
24 wasn't recorded until December of 2008.

25 Q. Okay. So for about a year and a

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1 half --

2 A. At least, yeah.

3 Q. -- the -- the North American Land Trust  
4 was collaborating and -- and working with all these  
5 different people to arrive at an amendment that the  
6 North American Land Trust was comfortable with; is  
7 that correct?

8 A. Yes, ma'am.

9 Q. And -- and the ultimate 2008 amendment,  
10 which was a product of all these drafts and  
11 revisions and handwritten notes, did NALT -- did  
12 the North American Land -- Land Trust ultimately  
13 sign it?

14 A. Yes.

15 Q. And -- and why do you think it signed  
16 the 2008 amendment?

17 A. Because it was satisfied on all of the  
18 elements of the -- the project that needed to be  
19 satisfied. Most importantly a conservation uplift  
20 and no impermissible private benefit.

21 Q. And -- and talking about no  
22 impermissible private benefit, there was a lot of  
23 innuendo surrounding the deed to the hospital  
24 for three -- for \$3 million or so.

25 A. Yeah.

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1 BY MR. MORAN:

2 Q. All right. Mr. Carter, I won't -- I  
3 will endeavor not to keep you here too much longer.  
4 For the record, I'm Wes Moran. I represent  
5 Georgetown Memorial Hospital.

6 I would like to start, would you just  
7 briefly paraphrase what NALT's mission is, please?

8 A. The preservation of open space and  
9 natural habitats and cultural resources.

10 Q. Okay. And in regard to that mission,  
11 is it -- is one of NALT's key roles to enforce the  
12 restrictions on conservation easements that it  
13 holds?

14 A. Absolutely.

15 Q. Okay. What incentive, if any, would  
16 NALT have to execute an amendment to a conservation  
17 easement that did not further the conservation  
18 benefits or purposes of the underlying easement?

19 A. There would be no incentive to do that.

20 Q. Okay. Now, in particular regard to the  
21 2008 amendment at issue in this case, if NALT had  
22 any concern that the amendment was improper or did  
23 not further the conservation purposes and values of  
24 the underlying easement, would it have executed  
25 that amendment?

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1 A. No, sir.

2 Q. Okay. We looked at the seven guiding  
3 principles for amending conservation easements that  
4 was published by the Land Trust Alliance in  
5 September of 2007; is that right?

6 A. Yes, sir.

7 Q. And those -- those are on page NALT 849  
8 in the notebook in front of you; is that right?

9 A. Correct.

10 Q. Now, with respect to the seven  
11 principles articulated here, is it your  
12 understanding that before executing the 2008  
13 amendment that is at issue in this lawsuit, did the  
14 North American Land Trust conduct its own analysis  
15 of each of those principles and determine that the  
16 2008 amendment was in compliance with those?

17 A. Yes, sir.

18 Q. Okay. And -- and if I heard your  
19 testimony correctly, that would have been  
20 Mr. Johnson primarily who conducted that analysis  
21 and then presented that to the North American Land  
22 Trust board; is that right?

23 A. Yes, sir.

24 MR. WALKER: Object to the form of the  
25 question.

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1 BY MR. MORAN:

2 Q. And -- and did I hear you correctly  
3 that -- that Mr. Johnson had a -- a master's degree  
4 from Yale in ecology --

5 A. Yes, sir.

6 Q. -- is that right?

7 A. (Witness moves head up and down.)

8 Q. Okay.

9 A. School of Forestry. He was --

10 Q. School of Forestry. But a master's  
11 degree from Yale?

12 A. Yes.

13 Q. And you don't happen to know what that  
14 degree -- the specific delineation of that degree,  
15 do you?

16 A. I recall the Grinnell undergraduate  
17 degree was ecology. The Yale School of Forestry  
18 degree, I'm sorry, I -- I don't recall.

19 Q. No, no worries at all.

20 Let's look at the amendment itself  
21 which is on NALT page 75 here.

22 If you would, please, just take a  
23 second to familiarize yourself with that document.  
24 Am I correct that this is the executed version of  
25 the amendment that was recorded in the Georgetown



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1 County -- with the Georgetown County Registrar of  
2 Deeds?

3 A. Yes, sir.

4 Q. Okay. Now, there are -- there are a  
5 couple of provisions that I would like to focus on  
6 here. If you look on the second page of that  
7 document on -- which is Bates numbered NALT 76,  
8 just a little past halfway down, there are three  
9 whereas clauses.

10 And the first states, whereas, upon  
11 study and inspection the grantee has concluded that  
12 the release of the hospital parcel shall have no  
13 material adverse effect upon the conservation  
14 purposes and conservation values of the  
15 conservation easement by virtue of its location and  
16 its present condition due to the expansion of the  
17 easement restrictions on the interior and marsh  
18 riverfront components of the property which enhance  
19 the biological and ecological value of the  
20 property.

21 Did I read that correctly?

22 A. You did.

23 Q. And is it your understanding that it  
24 was NALT's president Andy Johnson who executed this  
25 document on its behalf?

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1 A. Yes, sir.

2 Q. Okay. And based off of your history  
3 working with Mr. Johnson, based off of your  
4 experience with the North American Land Trust as an  
5 organization, would either Mr. Johnson or any  
6 officer of the North American Land Trust have  
7 signed their name to this document if it did not  
8 reach that determination that was articulated in  
9 that whereas clause I just read?

10 MR. WALKER: Object to the form of the  
11 question.

12 THE WITNESS: Absolutely not.

13 BY MR. MORAN:

14 Q. And I believe Ms. Tillman touched on  
15 this earlier. Would Mr. Johnson or any officer of  
16 North American Land Trust have represented here  
17 that there was a study and inspection done by the  
18 North American Land Trust if, in fact, there had  
19 not been one done?

20 A. No.

21 MR. WALKER: Object to the form of the  
22 question.

23 BY MR. MORAN:

24 Q. All right. I would like to look at the  
25 next whereas clause, which again begins with,

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1       whereas, upon study and inspection grantee -- and  
2       grantee is NALT; is that right?

3             A.     Yes, sir.

4             Q.     -- grantee has determined that the  
5       extinguishment of the five restricted building  
6       envelopes and the right to the five dwellings will  
7       have a greater ecological benefit and further  
8       advance and protect the conservation purposes of  
9       the conservation easement and any loss of such from  
10      the removal of the hospital parcel from the  
11      conservation easement, particularly due to the  
12      superior location of the five dwellings in terms of  
13      scenic view from the Pee Dee River, Black River and  
14      Intracoastal Waterway in proximity to significant  
15      environmental features of the property, including  
16      without limitation the critical marsh habitat, the  
17      archaeologically significant sites and the wetlands  
18      area of the property.

19            Did I read all of that correctly?

20            A.     You did.

21            Q.     Okay. Again, knowing what you know  
22      about Mr. Johnson and being an officer of NALT  
23      currently and being its representative of the  
24      organization, would -- would any of those  
25      categories of persons have represented here that

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1       there was a study and inspection done to support  
2       that whereas clause if, in fact, there was no study  
3       or inspection?

4               A.     Absolutely --

5               MR. WALKER:   Object --

6               THE WITNESS:   -- not.

7               MR. WALKER:   -- to the form.

8       BY MR. MORAN:

9               Q.     Okay.   And would Mr. Johnson or any  
10       officer of NALT have signed their name to this  
11       document if they had not determined that the  
12       contents of this whereas clause were accurate as  
13       they -- in accordance with their analysis of those  
14       issues?

15              MR. WALKER:   Object to the form.

16              THE WITNESS:   Absolutely not.

17       BY MR. MORAN:

18              Q.     Okay.   And the last whereas clause here  
19       I want to focus on is, whereas, the loss of scenic  
20       view from Highway 701 and S-22-325 as a result of  
21       the development of the hospital parcel is  
22       insignificant in comparison to the substantial  
23       ecological and scenic benefits of the  
24       extinguishment of the five dwelling rights in  
25       addition to the public and social benefits related

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1 to meeting the needs of the hospital.

2 Would anyone at NALT including  
3 Mr. Johnson have signed their name to this document  
4 had they not conducted an analysis and determined  
5 that to be an accurate statement?

6 MR. WALKER: Object to the form.

7 THE WITNESS: Absolutely not.

8 BY MR. MORAN:

9 Q. All of those whereas clauses that I  
10 just read, those were -- were statements that  
11 Mr. Johnson as the president of NALT attested to in  
12 2008 when this was executed; is that right?

13 A. Correct.

14 Q. And does NALT stand by those whereas  
15 clauses and the determinations reached therein to  
16 this day?

17 A. It does.

18 Q. Early in your testimony Mr. Walker  
19 showed you some -- some regulations that related to  
20 the extinguishment of conservation easements. Do  
21 you recall that?

22 A. I do.

23 Q. In the case at hand NALT is still a  
24 holder of the conservation easement on Weehaw  
25 Plantation, is it not?

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1 with the right to develop five of the building  
2 envelopes removed is \$2,400,000; is that right?

3 A. Yes, sir.

4 Q. And so that would be a difference in  
5 value of 3,450,000 as determined by Pamela Ghents  
6 Ness of Cromartie Appraisal Service; is that right?

7 A. Correct.

8 Q. Okay. And is this the document that  
9 the North American Land Trust relied on in  
10 determining that there was no inurement in value to  
11 the Youngs as a result of the amendment?

12 A. That's my understanding.

13 Q. Okay. We looked at some drafts of the  
14 amendment. Do you recall that?

15 A. I do.

16 Q. And if you would, please, can you go to  
17 page 758, NALT page 758. I want to draw your  
18 attention to one of the bracketed sentences that is  
19 struck here, and it's just past about halfway down.

20 A. Excuse me.

21 Q. There is a note in here that says, must  
22 discuss whether hospital parcel should remain  
23 subject to the easement to the limited extent  
24 necessary to assure that it remains restricted to  
25 use for a hospital and related uses.

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1 Do you see that?

2 A. I do.

3 Q. And that note was struck from the draft  
4 amendment, and ultimately the amendment nor any  
5 other document that you're aware of restricts the  
6 use of the hospital parcel for use as a hospital or  
7 medical-related uses; is that right?

8 A. Correct.

9 Q. Is that something that was discussed  
10 amongst North American Land Trust and Georgetown  
11 Memorial Hospital as these negotiations were going?

12 A. According to the records it seems that  
13 way, yes.

14 Q. Okay. And I believe that Ms. Tillman  
15 touched on this, but there are some other notes in  
16 here in all caps as well where it -- in the next  
17 paragraph down where it says, must be able to  
18 substantiate this statement with biological and  
19 other evidence, in -- in regard to one of the  
20 whereas clauses, right?

21 A. Yes, sir.

22 Q. Do you have any reason to believe that  
23 NALT did not conduct its own internal analysis to  
24 be able to substantiate that statement with  
25 biological and other evidence?